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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIS O. LATTIMORE,

Defendant and Appellant.

B286760

(Los Angeles County  
Super. Ct. No. BA445168)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bernie C. LaForteza, Judge. Affirmed.

James Renteria, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stephanie A. Miyoshi and Charles J. Sarosy, Deputy Attorneys General, for Plaintiff and Respondent.

## I. INTRODUCTION

In an amended information filed by the Los Angeles County District Attorney's Office, defendant and appellant Louis Lattimore was charged with assault with a semiautomatic firearm (Pen. Code, § 245, subd. (b))<sup>1</sup>, criminal threats (§ 422, subd. (a)), and possession of a firearm by a felon (§ 29800, subd. (a)(1)). As to the assault and threat offenses, the information alleged that defendant personally used a semiautomatic firearm. (§ 12022.5, subd. (a).) As to all counts, the amended information alleged that defendant had four prior felony convictions for which he served time in prison. (§ 667.5, subd. (b).)

The jury found defendant not guilty of the assault and threat charges and guilty of the firearm possession charge. On the People's motion, the trial court struck one of the four section 667.5, subdivision (b) prior conviction allegations. Defendant admitted the remaining three section 667.5, subdivision (b) prior conviction allegations. Pursuant to section 1385, the trial court struck the one-year term for one of defendant's three section 667.5, subdivision (b) prior convictions and sentenced defendant to five years in state prison.

On appeal, defendant contends the trial court violated his due process rights by barring him from cross-examining a police officer about the officer's alleged *Miranda*<sup>2</sup> violation. We affirm.

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<sup>1</sup> All further statutory citations are to the Penal Code unless otherwise noted.

<sup>2</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

## II. BACKGROUND

### A. *The People's Case*

Byron Arroyo testified that at around 8:00 a.m. on March 21, 2016, he took his wife Angelita Roldon to work. Arroyo then drove to and parked in front of his father's house where he was then living. While Arroyo was parked, defendant approached Arroyo's car and knocked on the window. Arroyo rolled down the window.

Defendant asked Arroyo if he knew Roldon. Arroyo said he was Roldon's husband. Defendant responded, "No, you're not." Arroyo said, "I'm Byron Arroyo." Defendant said, "No, you're not, you're the guy that used to stay down Magnolia Street." According to Arroyo, defendant then pulled out a gun and put it on Arroyo's chest. Defendant asked, "What the fuck you driving her car." Arroyo responded that he had given Roldon the car. Arroyo grabbed the gun and he and defendant struggled for it.

Arroyo's father approached and asked Arroyo if everything was okay. Arroyo responded that it was and his father went back to the house. Defendant then threatened to kill Arroyo or one of Arroyo's family members if he saw Arroyo with Roldon again. Arroyo's father returned and defendant left. Later that day, Arroyo reported the incident to the police.

On March 29, 2016, based on information they had received, Los Angeles Police Department Detective Stephen Watson and his partner Officer Chela Landau went to a construction site looking for defendant. The officers were supported by Los Angeles County Sheriff's Department deputies.

Detective Watson and Officer Landau dressed as construction workers in order to enter the construction site and identify defendant without alerting him to their presence. Once identified, the Sheriff's Department deputies were to take defendant into custody.

Detective Watson spotted defendant and noticed he was watching the detective and his partner "very, very closely." Detective Watson and Officer Landau approached defendant. As a ruse, Officer Landau said that defendant's car had earlier struck her and Detective Watson's car.

Defendant did not buy the ruse, said "Fuck this," and ran. Detective Watson ran after defendant. During the pursuit, defendant and the detective fell and rolled down a hill. Defendant righted himself and continued to flee. Detective Watson remained in place and advised the Sheriff's Department deputies of the location he had last seen defendant and the direction in which defendant ran. The deputies located and arrested defendant.

Detective Watson went to the location of defendant's arrest. He recognized defendant as the person he had pursued and noticed that defendant was missing a shoe. The detective then realized that he had dropped his sunglasses during the pursuit. He went back to the beginning of the pursuit and retraced his steps to try to find his sunglasses.

Detective Watson found his sunglasses. He also found defendant's missing shoe about 15 to 20 feet away. Directly between the sunglasses and the shoe, Detective Watson found a black .40 caliber handgun. He believed that the handgun had "fallen off" defendant. Detective Watson recovered the firearm and Officer Landau "booked" it.

On April 1, 2016, Los Angeles Police Department Detective Vincent Rojas met with Arroyo. Detective Rojas showed Arroyo the handgun Detective Watson recovered. Arroyo identified the handgun as the one defendant pointed at him. At trial, Arroyo testified that the handgun looked like the handgun defendant had used, but he was not 100 percent certain.

At the end of the People's case, defendant and the People stipulated that defendant had previously been convicted of a felony.

B. *The Defense Case*

Defendant testified that in February 2015, he began dating Roldon. He understood that "the father of her children" "was no longer in the picture" because "he" had beaten and choked Roldon in front of their children.

In March 2016, defendant and Roldon began living together. Defendant put his minivan in Roldon's name so that it could be insured less expensively. Defendant paid for the insurance.

At some point, defendant learned that Arroyo also was covered by Roldon's car insurance. Defendant "started to feel like, what's going on here? I know there is no way I can keep them from communicating with each other because they have two kids, but about me and her exclusive, our business, it should be between us."

On March 21, 2016, defendant went to Arroyo's residence because he did not believe his relationship with Roldon was going well. He wanted the truth and "closure." He was not armed with

a semiautomatic gun. When he approached the car in which Arroyo was sitting, it looked cloudy, as if Arroyo was smoking.

Defendant knocked on the window of Arroyo's car and asked if he was Roldon's husband. Arroyo said, "Yes." Defendant asked if Arroyo and Roldon were dating. Arroyo responded, "That's my wife." Defendant understood the answer to mean that Arroyo and Roldon were dating.

Defendant said, "It's okay. . . . I was [Roldon's] boyfriend. No problems from me." Defendant said that Roldon was a "good girl" and that Arroyo should not hit her anymore. Arroyo responded, "You don't fucking know what you're talking about" and blew smoke in defendant's face from a glass pipe.

When it appeared that Arroyo was going to blow smoke in defendant's face again, defendant grabbed the pipe. Defendant and Arroyo exchanged additional words before Arroyo told defendant to leave and threatened, "If I catch you again, I'll blast your ass." Defendant did not threaten Arroyo.

On March 23, 2016, defendant purchased the .40 caliber gun recovered in this case because he was "scared." He was "familiar with jealous husbands" and did not want a "crazy person jumping behind [him] and shooting [him] in the back or running up at the work site and shooting other people [or] trying to shoot [him]."

When the police arrived at his place of work, defendant ran because he was facing a federal probation violation for failing to report. He thought the police, who did not identify themselves as police officers, were federal marshals. Detective Watson asked defendant why he ran. Defendant responded, "Are you guys the marshals?" Detective Watson said, "No. We're L.A.P.D." Defendant asked why the police wanted him. Detective Watson

responded that defendant was wanted for questioning concerning an assault with a deadly weapon. Defendant said, “Well, you guys must have the wrong guy.”

Detective Watson testified that he did not ask defendant why he ran. Instead, he asked how defendant had “made us as cops.” Defendant responded, “I thought you were marshals.” Detective Watson understood defendant to mean that defendant had run because he believed that Detective Watson and Officer Landau were federal marshals. Detective Watson did not include his conversation with defendant in his report or advise Detective Rojas of the conversation.

### III. DISCUSSION

Defendant contends the trial court abused its discretion and violated his due process right to confrontation when it failed to determine whether Detective Watson violated his *Miranda* rights and barred him from impeaching the detective with the alleged *Miranda* violation.<sup>3</sup> We do not hold that the trial court erred, but even assuming for argument’s sake that there was error, it was harmless in light of the jury’s verdicts.

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<sup>3</sup> Defendant also argues that if we hold that he failed to preserve his confrontation clause issue for appellate review by objecting on that ground in the trial court, then he received ineffective assistance of counsel. Because we hold any confrontation clause violation was harmless, we do not reach the claim of ineffective assistance of counsel.

A. *Background*

Detective Watson testified on cross-examination that he had not read defendant his *Miranda* rights. Defense counsel pressed the detective in the following exchange:

“Q [Y]ou know about *Miranda* right?

“A That’s correct.

“Q That means any time a defendant is in custody, not free to go, and is interrogated, you must read them their rights; correct?

“A That’s correct.

“Q A detective like you, with all that experience, threw that away. You didn’t read him his rights.

“A No, I did not.

“Q The law doesn’t apply to you?”

The trial court then asked the parties to go to sidebar. It asked defense counsel why the *Miranda* issue had not been addressed in an Evidence Code section 402 hearing. Defense counsel responded that defendant was going to take the stand and testify that he ran because he believed Detective Watson and Officer Landau were federal marshals and not police officers. He had not done anything wrong to Arroyo. Defense counsel argued that defendant’s statement to Detective Watson was “*Miranda* deficient.”

The prosecutor informed the trial court that defense counsel had claimed during an earlier Evidence Code section 402 hearing that defendant’s statement to Detective Watson was taken in violation of *Miranda* and she had agreed not to ask about it. Defense counsel explained that he wanted to raise the issue of the “*Miranda* deficient” statement for two reasons. First,



it showed that Detective Watson omitted the statement from his reports. “His police reports go toward bias that are incomplete.” Second, the statement was consistent with innocence and not with a consciousness of guilt.

The trial court said that defense counsel should have raised the issue in an Evidence Code section 402 hearing.<sup>4</sup> It said that the prosecution had not elicited any statements by defendant. Defense counsel said he would put defendant on the stand and ask him about his statement, “I thought you were marshals.” The trial court responded, “Well, you can call him your witness then, and then you’re going to raise a *Miranda* issue.” Defense counsel said he would not. The trial court noted that defense counsel had just implied to the jury that the statement taken from defendant was “*Miranda*-deficient.”

The prosecutor stated that she did not object to the admission of defendant’s statement, but did object to the argument that the People were doing something improper. She noted that the statement was turned over to defense counsel when discovered and defense counsel was still claiming a *Miranda* violation. Defense counsel responded, “I think we should do this so I can fully air my grievances, rather than to

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<sup>4</sup> During a pretrial hearing on Evidence Code section 402 motions, defense counsel related he had learned from the prosecutor that the detaining officers asked defendant why he ran. Apparently referring to defendant’s response, defense counsel said there was an issue if defendant testified because his response was “un-*Mirandized*” and not contained in the police reports. The trial court stated that the issue seemed “involved” and that there would be more time to address it after the presentation of the People’s case.

have the prosecutor now alleging my misconduct. So I'd rather have a full hearing . . . ."

The trial court responded, "Well, we can do that afterwards. But I'm going to order you to not go into this area. You're free to do whatever you want to do in terms of your defense. If you need to recall Detective Watson, that's fine. You have to show an offer of proof to the court as to the relevancy, but we'll take that up at a later time." It said, "We can take up that issue later on about whatever you believe—there was some misconduct on either side."

Later, after defense counsel asked Detective Rojas if Detective Watson told him about defendant's statement about why defendant ran, the trial court and the parties revisited the issue of Detective Watson's alleged *Miranda* violation. Defense counsel asked for an Evidence Code section 402 hearing. The trial court stated that the prosecution had not elicited testimony about any statement from defendant and that defense counsel was "trying to bootstrap in a *Miranda* violation through [his] own questions." After defense counsel again stated his intended use of the evidence of the alleged *Miranda* violation, the trial court stated, "[Y]ou've made your record on that [defense counsel]. The court respectfully disagrees with your assessment of that."

When the trial resumed, the trial court instructed the jury: "Ladies and gentlemen, I want to remind you that questions posed by the attorneys are not evidence. Do not assume something is true just because an attorney asks a question. If there is no answer, do not speculate what the answer might have been."

“Also:

“Whether law enforcement in this case violated *Miranda* is a question of law for the court to decide, and the court did not make any such finding.”

B. *Analysis*

The federal and state Constitutions guarantee a criminal defendant the right to confront the prosecution’s witnesses. (U.S. Const., 6th Amend.; Cal. Const. art. I, § 15.) A violation of a defendant’s right to confrontation is reviewed for prejudice under *Chapman v. California* (1967) 386 U.S. 18 (*Chapman*). (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 395.) Under the *Chapman* standard, error is harmless when it appears “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” (*Chapman, supra*, 386 U.S. at p. 24.) Here, any error was harmless.

The trial court instructed the jury on the elements of possession of a firearm by a felon as follows:

“To prove that the defendant is guilty of this crime, the People must prove that:

“1. The defendant owned a firearm;

“2. The defendant knew that he owned the firearm;

“AND

“3. The defendant had previously been convicted of a felony.”

In the People’s case, defendant stipulated that he had previously been convicted of a felony.<sup>5</sup> In the defense case,

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<sup>5</sup> On this point, the trial court instructed the jury that defendant and the People had stipulated that defendant

defendant testified that on March 23, 2016, he purchased a .40 caliber handgun, and that he possessed that firearm at the construction site on March 29, 2016. Thus, defendant admitted every element of the offense of possession of a firearm by a felon. Because defendant admitted all of the elements of the offense, it is beyond a reasonable doubt that any error by the trial court with respect to Detective Watson’s alleged *Miranda* violation did not contribute to the jury’s conviction on the possession of a firearm by a felon offense. (*Chapman, supra*, 386 U.S. at p. 24.)

Defendant contends the error was prejudicial because it prevented him from “casting doubt on the character of a career police officer who both violated policy in his conduct and failed to disclose potentially exculpatory evidence until just before trial. This was the same officer who found a gun he attributed to [defendant].” As explained above, defendant admitted he purchased the firearm that Detective Watson found. Whether defendant was able to impeach Detective Watson with further testimony concerning his failure to give defendant a *Miranda* warning or to disclose that failure in his report would not have altered the jury’s view of *defendant’s* testimony.

Defendant also speculates that the trial court’s ruling preventing him from cross-examining Detective Watson about the alleged *Miranda* violation “likely influenced” defendant’s decision to admit he possessed the firearm “as he may have believed that his testimony was the only vehicle to introduce evidence of the officer’s bias, as well as the potentially-exculpatory statement Officer Watson elicited in violation of *Miranda*.” But defense counsel told the jury in opening argument—that is, prior to

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previously had been convicted of a felony and that it must accept that fact as proved.

Detective Watson’s testimony—that “when [defendant] went to work, he said I don’t know if this guy, this jealous husband who has a restraining order on his wife, is going to come and smoke me. So he went and he got a gun. This is his gun. He got that gun—and he’s a felon. He has two prior convictions for drug sales. He’s not supposed to have a gun. But he got a gun because he said better safe than sorry. [¶] . . . [¶] I’m not going to deny this was his gun. He had that gun because he felt that he was going to be killed.”

Defendant also appears to argue that the failure to allow him to impeach Detective Watson impeded the jury’s ability to find he possessed the handgun in self-defense. He reasons that “[e]vidence showing that [he] could not trust the police to deal with him honestly would have strongly supported the proposition that he reasonably believed he needed to temporarily possess the firearm that was found for his own protection.” Defendant’s argument fails because Detective Watson’s alleged *Miranda* violation occurred after defendant purchased and possessed the firearm and thus could not have been the impetus for defendant’s purchase and possession.

#### **IV. DISPOSITION**

The judgment is affirmed.

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KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.